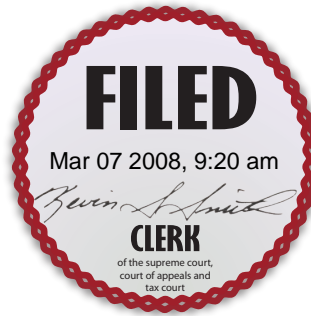


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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TIMOTHY LEE RICHARDS, SR.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A05-0707-CR-420
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

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APPEAL FROM THE ALLEN SUPERIOR COURT  
The Honorable Kenneth Scheibenberger, Judge  
Cause No. 02D04-0701-FC-2

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**MARCH 7, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BARTEAU, Senior Judge**

## STATEMENT OF THE CASE

Appellant-Defendant Timothy Lee Richards, Sr., appeals his convictions of possession of cocaine, a Class D felony; possession of marijuana, a Class A misdemeanor; and resisting law enforcement, a Class A misdemeanor. We affirm.

## ISSUE

Richards raises one issue for our review, which we restate as: Whether the trial court abused its discretion in admitting certain evidence over Richards' objection.

## FACTS AND PROCEDURAL HISTORY

On December 23, 2006, Fort Wayne Police Officer Cory Troyer responded to a "burglary in progress" call in a location known as a "high narcotic and weapons" area. (Tr. at 6, 25). Officer Troyer was advised that a black male wearing a puffy, black coat was "messing" with the padlock on the door of a building behind a car wash. (Tr. at 6).

When Officer Troyer arrived on the scene, he observed a black male with a puffy, black coat standing by a garage door just south of the car wash. Officer Troyer drove by, turned around, and came back. Upon returning, he noticed a second man on a bicycle nearby but no other people in the area.

As Officer Troyer exited his patrol car and approached the man in the black coat, another officer arrived and began speaking to the man on the bicycle. Officer Troyer asked the man in the black coat his name and whether he had been at the building. The man replied that his name was "Tim Richards." Officer Troyer, who was concerned that Richards was armed with a handgun or had burglary tools that could be used as weapons, asked Richards if

he had any weapons. Richards responded that he did not have weapons, but he began to act nervous and to walk away. Continuing to walk away, Richards then said that he had keys and could show Officer Troyer the padlock. Officer Troyer noticed that Richards' hands were shaking and he was jingling the keys as he continued to retreat. Officer Troyer found this behavior to be suspicious, as if Richards was trying to put distance between himself and the officer.

Officer Troyer then told Richards, "Hey, I need to pat you down for weapons because you're making me very nervous." (Tr. at 12). Richards then turned and began running. A third officer who had arrived at the scene chased and caught Richards. That officer and Richards struggled, with Richards refusing to give his hands to be handcuffed. It took all three officers to secure Richards.

When the officers lifted Richards off the ground, they noticed a plastic bag with a white rock-like substance, later identified as cocaine, lying on the ground where Richards had been. Fort Wayne Police Officer George Nicklow, who had helped secure Richards, noticed that the baggie had fallen from Richards' waist area. The officers placed Richards under arrest, and in a search incident to that arrest discovered a bag that contained what was later determined to be marijuana and a bag that was later determined to contain cocaine.

After a bench trial, the trial court found Richards guilty of possession of cocaine, possession of marijuana, and resisting law enforcement.

### DISCUSSION AND DECISION

Richards contends that the trial court abused its discretion in admitting the narcotics

evidence upon which the charges were based. The trial court denied his motion to suppress and overruled his objection during trial, admitting the exhibits. The admission of evidence is within the sound discretion of the trial court, and a decision whether to admit evidence will not be reversed absent a showing of manifest abuse of discretion by the trial court resulting in the denial of a fair trial. *Johnson v. State*, 831 N.E.2d 163, 168-69 (Ind. Ct. App. 2005), *trans. denied*. For a decision to be an abuse of discretion, it must be clearly against the logic and effect of the facts and circumstances before the trial court. *Id.* at 169.

Richards' challenge to the admissibility of the evidence is based on his belief that the police officers exceeded the scope of a permissible detention and thus violated the Fourth Amendment to the United States Constitution as explained in *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). An officer has the authority to stop a person briefly for investigative purposes if the officer has reasonable suspicion of criminal activity. *Williams v. State*, 754 N.E.2d 584, 587 (Ind. Ct. App. 2001), *trans. denied* (citing *Terry*, 392 U.S. at 30).

Reasonable suspicion exists where the facts known to the officer and the reasonable inferences therefrom would cause an ordinarily prudent person to believe that criminal activity has or is about to occur. *Id.* The reasonable suspicion required for a *Terry* stop need not rise to the level of suspicion necessary for probable cause. *State v. Belcher*, 725 N.E.2d 92, 94 (Ind. Ct. App. 2000), *trans. denied*. Whether the officer's suspicion was reasonable is a fact-sensitive inquiry that must be determined on a case-by-case basis. *Id.* Moreover, this fact-sensitive analysis is performed, not in a vacuum, but by considering the totality of the circumstances. *Id.* The reasonableness of the officer's suspicion should take into account the

officer's "experience and expertise" in assessing the meaning of the existing facts and circumstances. *Ornelas v. United States*, 517 U.S. 690, 116 S.Ct. 1657, 1663, 134 L.Ed.2d 911 (1996); *Carter v. State*, 692 N.E.2d 464, 467 (Ind. Ct. App. 1997) (quoting *Wilson v. State*, 670 N.E.2d 27, 31 (Ind. Ct. App. 1996)).

The crux of Richards' argument is that his initial detention ended when he accurately identified himself, waved the keys, and told the officer he had no weapons. Richards, however, fails to note that Officer Troyer had just begun his investigation. Officer Troyer had not examined the premises for evidence of criminal activity before Richards' attempted escape. Officer Troyer, who noted Richards' nervousness when asked about weapons and who knew that burglars carry burglary tools that can be easily hidden under a large coat and used as weapons, was not required to believe Richards' claim that he was unarmed.

An officer may conduct a pat down search if the officer reasonably believes, based on specific articulable facts and in light of the officer's experience, that the particular individual before him is armed and dangerous. *Trigg v. State*, 725 N.E.2d 446, 449 (Ind. Ct. App. 2000). This pat down search allows the officer to pursue his investigation without fear for his safety or the safety of others. *State v. Joe*, 693 N.E.2d 573, 575 (Ind. Ct. App. 1998), *trans. denied*; *Johnson v. State*, 710 N.E.2d 925, 928 (Ind. Ct. App. 1999).

Here, Officer Troyer responded to a reported burglary in progress in a high crime area. He found Richards, who met the description of the suspected burglar, standing in the location of the reported burglary attempt. Richards began acting nervously when Officer Troyer inquired about weapons, so much so that Officer Troyer became concerned for his

safety and stated that he was going to do a pat down for weapons. Given Officer Troyer's knowledge that he was in a high crime area, coupled with his experience that burglars tend to carry weapons or burglary tools that can be used as weapons and that such weapons are easily concealed inside a puffy coat, we determine that it was reasonable for him to attempt to pat down Richards to assure his safety and the safety of the other officers.

Officer Troyer's concern about weapons was reasonable, and he was entitled to continue his investigation without fear of being injured by Richards. Richards was not permitted to flee in the middle of the investigation of the burglary. During the investigative stop, Officer Troyer was entitled to "temporarily freeze the situation in order to [allow him] to make an investigative inquiry." *See Johnson v. State*, 766 N.E.2d 426, 429 (Ind. Ct. App. 2002), *trans. denied*. The confiscation of the first baggie occurred when it fell to the ground after Richards attempted to flee. Richards was then placed under arrest, and the other baggies were found pursuant to a legitimate search after an arrest. There was no Fourth Amendment violation here.

Richards also contends that the trial court abused its discretion in admitting the baggies containing illegal substances because they were procured in violation of Article 1, § 11 of the Indiana Constitution.<sup>1</sup> Citing *Moran v. State*, 644 N.E.2d 536, 540 (Ind. 1994), he notes that "this Article is to protect from unreasonable police activity those areas of life that Hoosiers regard as private." Appellant's Brief at 5. His argument hinges, however, on his

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<sup>1</sup> This section provides in pertinent part that the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search or seizure, shall not be violated . . . ."

mistaken belief that he was free to walk away because the officers had “addressed and satisfied” the purpose of the initial investigation. As we discussed above, the initial investigation was in progress when Richards began to flee.

## CONCLUSION

The initial investigation of Richards was proper, as was the request to pat down Richards for weapons. There was no violation of either the United States or the Indiana constitutions here, and the trial court properly admitted the evidence.

Affirmed.

RILEY, J., and MATHIAS, J., concur.